IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-11-2007

CORAM :

THE HONOURABLE MR. JUSTICE A.KULASEKARAN

C.R.P. (PD) No. 1700 of 2006
and
M.P. No. 1 of 2006
-o-

K. Balaraman ... Petitioner

Versus

P. Renuka ... Respondent

Petition under Article 227 of The Constitution of India against the Order dated 21.07.2006 made in I.A. No. 193 of 2006 in O.S. No. 299 of 2003 on the file of Principal Subordinate Judge, Cuddalore.

For Petitioner : Mr. R. Gururaj
For Respondent : Ms. R. Meenal

ORDER

The defendant in O.S. No. 299 of 2003 on the file of Principal Subordinate Judge, Cuddalore is the revision petitioner. The said suit was filed by the respondent herein for recovery of money based on two promissory notes and one cheque. In the said suit, the petitioner has filed his written statement stating that he borrowed only Rs.9,000/- on 10.10.2000 for which the respondent insisted to pay interest at the rate of 60% per annum and also obtained a blank cheque and a promissory note. Thereafter, the petitioner herein has filed an application in I.A. No. 193 of 2006 under Order 8 Rule 9 CPC seeking permission of the Court to file additional written statement to the effect that he executed two mortgage deeds on 19.03.1998 and 28.12.1999 and borrowed a sum of Rs.25,000/- and Rs.20,000/- respectively and on the date of execution of the mortgage deeds, the respondent has obtained the signature of the petitioner in blank papers and also in two blank cheques. The trial court was of the view that the said pleas taken by the petitioner herein are inconsistent dismissed the said application.

2. The learned counsel appearing for the petitioner submitted that the petitioner has borrowed Rs.9,000/- on 10.10.2000 and the respondent insisted to pay 60% interest per annum and obtained his signatures in blank cheques and blank promisory notes. The blank promisory note was made use of by the plaintiff illegally as if a sum of Rs.1,00,000/- was paid to the defendant and filed the suit. The blank cheque was filled up illegally for Rs.35,000/- based on which C.C. No. 16 of 2000 was filed. Similarly, on 20.10.2000, a sum of Rs.5,000/- was received by the petitioner and at that time, she obtained the petitioner's signature in blank promissory notes, cheques etc., which were used to falsely prepare a promissory note for Rs.50,000/- to show that the petitioner received that

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amount and a cheque was filled up for Rs.20,000/- as if the petitioner has drawn the same in favour of the respondent for acknowledging receipt of Rs.20,000/- from her. Prior to this transaction, the petitioner executed two mortgage deeds dated 19.03.1998 and 28.12.1999 for Rs.25,000/- and Rs.20,000/- respectively, on that date also the respondent obtained his signature in two blank papers and two blank cheques as security for repayment of interest. The above said facts were omitted to be mentioned in the written statement already filed, hence, in order to bring proper facts, he intended to file additional written statement; that the court below failed to take note of the above said facts and erroneously held that it is not open to the petitioner, as a defendant to take inconsistent plea and dismissed the application.

3. The learned counsel for the respondent submitted that the petitioner has taken a totally different stand in the additional written statement sought to be filed by him, which is contrary to the written statement filed by him earlier, hence, the court below has rightly dismissed the application seeking leave to file additional written statement and prayed for dismissal of the revision petition.

4. This Court carefully considered by the counsel for both sides and perused the records placed. A prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute the cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. In a case of amendment of a written statement the courts would be more liberal in allowing the application than that of a plaint as the question of prejudice would be far less in the former than in the latter. Moreover, in the event of allowing the amendment the other party can be compensated in money. Technicality of law should not be permitted to hamper the courts in the administration of justice between the parties. Hence, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can be allowed as long as the amended pleadings do not result in causing grave and irretrievable prejudice to the plaintiff or displacing him completely. Nor by seeking amendment to the written statement would it be open to a party to wriggle out of an admission as admission is a material piece of evidence which would be in favour of a person who would be entitled to take advantage of that admission. However, the admission can be explained and it would be permissible to add a rider and/or proviso thereto while keeping the admission intact. Followed (Usha Balashaheb Swami and others vs. Kiran Appaso Swami and others) (2007) 5 Supreme Court Cases 602 wherein the Honourable Supreme Court in Para Nos. 19, 20, 21 and 22, held thus:-

> "19. It is equally well-settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of

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defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

20. Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case (see B.K. Narayana Pillai vs. Parameswaran Pillai and Baldev Singh vs. Manohar Singh) Even the decision relied on by the plaintiff in Modi Spg clearly recognises that inconsistent pleas can be taken in the pleadings. In this context, we may also refer to the decision of this Court in Basavan Jaggu Dhobi vs. Sukhnandan Ramdas Chaudhary. In that case, the defendant had initially taken up the stand that he was a joint tenant along with others. Subsequently, he submitted that he was a licensee for monetary consideration who was deemed to be a tenant as per the provisions of Section 15-A of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947. This Court held that the defendant could have validly taken such an inconsistent defence. While allowing the amendment of the written statement, this Court observed in Basavan Jaggu Dhobi case as follows:- (SCC p.180, para 3)

> 3. As regards the first contention, we are afraid that the courts below have gone wrong in holding that it is not open to the defendant to amend his written statement under Order 6 Rule 17 CPC by taking a contrary stand than what was stated originally in the written statement. This is opposed to the settled law. It is open to a defendant to take even contrary stands or contradictory stands, thereby the cause of action is not in any manner affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action.

21. As we have already noted herein earlier than in allowing the amendment of the written statement a liberay approach is a general view when admittedly in the event of allowing the amendment the other party can be compensated in money. Technicality of law should not be permitted to hamper the courts in the administration of justice between the parties. In L.J. Leach & Co. Ltd v. Jardine Skinner & Co, this Court observed

> "that the courts are more generous in allowing amendment of the written statement as the question of prejudice is less likely to operate in that event.

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In that case this Court also held

> "that the defendant has right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to serious injustice."
>
> 22. Keeping these principles in mind, namely, that in a case of amendment of a written statement the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed, we may now proceed to consider whether the High Court was justified in rejecting the application for amendment of the written statement."

5. Applying the above said ratio laid down by the Honourable Supreme Court to the case on hand, this Court is of the view that the petitioner has taken a plea that his signatures were obtained by the respondent in blank pronotes, papers and cheques and he want to extend the same plea to say that even at the time of execution of two mortgage deeds stated above the respondent has taken his signatures in blank papers etc., by filing additional written statement, which do not result in causing grave and irretrievable prejudice to the respondent herein or displacing her completely and the respondent take advantage of inconsistency, if permissible under law.

5. In view of the above discussion, the Order dated 21.07.2006 made in I.A. No. 193 of 2006 is set aside. The revision petition is ordered as prayed for. No costs. The trial court is directed to give reasonable opportunity to the respondent herein to file her reply to the additional written statement of the petitioner. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
The Principal Subordinate Judge
Sub Court
Cuddalore

+ 1 CC To Mr.P.Gunraj, Advocate SR NO.69740

+ 1 CC To Mr. R.Subramanian, Advocate SR NO.69436

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